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Supreme Court, U.S.
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NO. 95-1325

In the Supreme Court of the United States

OCTOBER TERM, 1995

AMERICAN PIONEER LIFE INSURANCE COMPANY AND JERRY CURTIS,
Petitioners

v.

FREDDY J. WILLIAMSON,
Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

PETITIONERS' REPLY TO THE BRIEF IN OPPOSITION

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RULE 29.6 STATEMENT

Petitioner American Pioneer Life Insurance Company is owned by American Pioneer Progressive Life and Health Insurance of New York, Inc., which is owned by Universal Holding Corporation. American Pioneer has no subsidiaries.

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1. PETITIONERS RAISED IN THE COURTS BELOW THEIR CLAIM THAT THE PUNITIVE DAMAGE AWARD VIOLATES THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT

Respondent is incorrect in the assertion that petitioners did not raise and preserve in the State courts the argument that the award of punitive damages violates the Due Process Clause of the Fourteenth Amendment.[1] Petitioners

[1] Respondent made the same argument in response to petitioners' motion for a stay in this Court. This was his only argument in opposition to the stay motion. Justice Kennedy granted a stay of the judgment of the Supreme Court of Alabama.

Respondent appended to his brief opposing petitioners' stay motion various briefs petitioners filed in the trial court and in the Alabama Supreme Court. In this reply to the brief in opposition, petitioners refer to these briefs (lodged with the Court by respondent) to establish that petitioners have consistently argued that the punitive damage award was so excessive as to violate their right to due process under the Fourteenth Amendment.

made their due process claim repeatedly both in the post-verdict proceedings in the trial court and in the Alabama Supreme Court.

In the trial court, in their motion for a new trial, petitioners contended that the punitive damage award is "contrary to due process of law . . . as guaranteed by the United States Constitution . . . in that the award for punitive damages is vague and not rationally related to any legitimate government interest"; that the "damages awarded . . . are excessive . . . in violation of the United States and Alabama Constitutions"; and that the $3 million in punitive damages awarded by the jury "so far exceeds the bounds of reasonableness as to shock the conscience of the Court".[2]

In their brief in the Alabama Supreme Court, petitioners argued that the trial court had failed to consider "constitutionally mandated" factors as required by the Supreme Court of the United States in *Pacific Mutual Life Insurance Co. v. Haslip*, 499 U.S. 1 (1991).[3] (In the *Haslip* case, this Court addressed whether Alabama punitive damage procedures violated the due process clause of the Fourteenth Amendment.) In its decision in this case, the Alabama Supreme Court made clear that it had considered and rejected petitioners' federal constitutional claim. The court stated that it had "independently applied . . . the factors approved by

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[2] Motion for New Trial, Motion to Alter, Amend or Vacate Judgment, Motion for Remittitur and Motion for Judgment Notwithstanding the Verdict at ¶¶ 18, 20, 10 (Attachment 4 to respondent's brief in opposition to petitioner's application for a stay, see note 1 above).

[3] Brief of Appellants at 10, 43, and 44 (Attachment 1 to respondent's brief in opposition to petitioners' application for a stay, see note 1 above).

the United States Supreme Court in . . . *Haslip* . . .."[4]

In support of their application for rehearing to the Alabama Supreme Court, petitioners argued that "federal due process" required a reduction in the punitive damage award; that the punitive damage award was "contrary to due process of law . . . guaranteed by the United States Constitution", and that the Supreme Court of the United States had recognized that "the Due Process Clause 'imposes a substantive limit on the size of punitive damage awards' ", citing *Honda Motor Co. v. Oberg*, 114 S. Ct. 2331. 2335 (1994).[5] In his dissent to the denial of rehearing, Justice Maddox stated that the $2 million remitted award of punitive damages is "an unconstitutional taking of American Pioneer's property."[6]

2. RESPONDENT'S ECONOMIC LOSS WAS $3,182, NOT $112,500

In his brief in opposition, respondent seeks to justify the punitive damage award of $2 million by repeatedly asserting that petitioners' conduct deprived him of $112,500 in earnings.[7] Contrary to this assertion, the undisputed evidence shows that respondent's lost commissions amounted

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[4] Appendix to the Petition at 11a.

[5] Application of Appellants for Rehearing at 4 (Attachment 3 to respondent's brief in opposition to petitioner's application for a stay, see note 1 above); Brief in support of Application for Rehearing by Appellants at 3-4 (Attachment 6).

[6] Appendix to the Petition at 19a.

[7] Brief in Opposition at 16, 3, and 21.

to only $3,182. The compensatory damage award of $250,000 is more than 78 times his economic loss, and the punitive damage award is more that 628 times his lost commissions.

An American Pioneer witness testified without contradiction that the company's decision to invoke the forfeiture provision resulted in respondent's loss of $3,182 in commissions for the three-year period 1989 through 1991, after which his commissions dropped below the minimum payable pursuant to his contract. R. 513-518. In his testimony, respondent explained an exhibit he prepared that purported to show, based on assumptions contrary to the undisputed evidence, that if he had received certain hypothetical amounts over a future ten-year period and had put these in an account at 8 per cent interest they would have been worth $112,500 at the end of ten years. R. 732-736; Pl. Exh. 21.[8] This is the source of the $112,500 figure employed in the opposition to the petition for certiorari. The figure is not mentioned in the opinion of the Alabama Supreme Court.

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[8] The statements in respondent's brief in opposition that the $112,500 figure is based on "petitioners' own projections" and on "an interest rate guaranteed when respondent's vested renewal commissions were terminated" (Brief in Opposition at 16) are without any evidentiary basis.

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted,

Dated: April 1, 1996

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